



KATHERINE K. HANLEY
CHAIRMAN

COMMONWEALTH OF VIRGINIA
COUNTY OF FAIRFAX
BOARD OF SUPERVISORS
OFFICE OF THE CHAIRMAN

Suite 530
12000 GOVERNMENT CENTER PARKWAY
FAIRFAX, VIRGINIA 22035-0071

TELEPHONE 703/324-2321
FAX 703/324-3955
chairman@fairfaxcounty.gov

Tuesday, October 28, 2003

Honorable Richard C. Thoesen
Mayor, Town of Herndon
c/o Town Clerk
777 Lynn Street
Herndon, Virginia 20172

Re: Dulles Rail Transportation Improvement District Petition

Dear Mayor Thoesen:

On October 24, 2003, the Board of Supervisors received a petition from commercial and industrial landowners requesting the Board to create a Dulles Rail Transportation Improvement District pursuant to Chapter 15 of Title 33.1 of the Code of Virginia, as amended. That petition subsequently was amended the morning of October 27, 2003, to add an additional signature page. Pursuant to Va. Code Ann. § 33.1-431(C) (LNMB Supp. 2003), at its meeting on October 27, 2003, the Board voted to schedule a public hearing on the question of whether the district proposed by the petition, as amended (the "Petition"), should be created, that public hearing to occur at the Board's regular meeting on December 8, 2003.

The proposed district as set forth in the Petition includes real property located within the Town of Herndon. Section 33.1-431(C) provides in pertinent part as follows:

If real property within a town is included in the proposed district, the governing body [of the county] shall deliver a copy of the petition and notice of the public hearing to the town council at least thirty days prior to the public hearing, and the town council may by resolution determine if it wishes such property located within the town to be included within the proposed district and shall deliver a copy of any such resolution to the governing body at the public hearing required by this section.

Accordingly, the Board hereby delivers to the Town Council a copy of the Petition and a copy of the notice of the public hearing scheduled before the Board on December 8, 2003.

The Board requests that the Town Council consider this matter at its earliest convenience and adopt a resolution approving the inclusion within the proposed district of the properties located within Herndon as shown in the Petition. We thank the Council for its consideration of this matter.

Sincerely,

Katherine K. Hanley,
Chairman, Board of Supervisors

Enclosures

NOTICE OF PUBLIC HEARING ON THE QUESTION OF CREATING A DULLES RAIL
TRANSPORTATION IMPROVEMENT DISTRICT

TAKE NOTICE that at a regular meeting of the Board of Supervisors of the County of Fairfax, Virginia, held in the Board Room of the Government Center, 12000 Government Center Parkway, Fairfax, Virginia, on Monday, the 27th day of October, 2003, said Board fixed a day for a public hearing on the question of whether to create a Dulles Rail Transportation Improvement District substantially as proposed in an amended petition submitted to the Board by owners of commercial and industrial properties within the proposed district as provided in Chapter 15 of Title 33.1 of the Code of Virginia, as amended, and the Clerk of said Board was directed to cause notice of the public hearing by publication once a week for three consecutive weeks in a newspaper of general circulation in said County, to-wit, that at a regular meeting of said Board to be held in the Board Room of the Government Center, 12000 Government Center Parkway, Fairfax, Virginia, on

MONDAY
DECEMBER 8, 2003
COMMENCING AT 4:00 P.M.

The said Board of Supervisors of the County of Fairfax, Virginia, will hold a public hearing at which time and place any interested parties may appear and be heard. Applicable law provides that the hearing shall consider whether the residents and owners of real property within the proposed district would benefit from the establishment of the proposed district, and provides further that all interested persons who either reside in or own taxable real property within the proposed district shall have the right to appear and show cause why any property or properties should not be included in the proposed district. In addition, owners of taxable real property located outside the boundaries of the district as proposed by the amended petition but near those boundaries should particularly take notice that said Board, following the hearing, is empowered by law to pass a resolution creating the district which shall be reasonably consistent with the amended petition, but said Board is not necessarily required to adopt boundaries for the district exactly as proposed in the amended petition.

Copies of the full text of the amended petition are available for inspection in the Office of the Clerk to the Board, Suite 533, 12000 Government Center Parkway, Fairfax, Virginia, during normal business hours, and at all public libraries of the County of Fairfax during normal operating hours.

Given under my hand this 28th day of October, 2003.

A COPY TESTE:



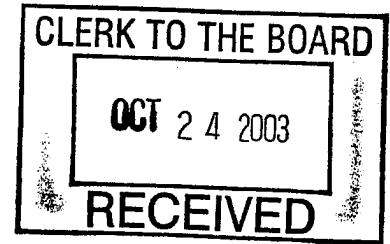
Nancy Vehrs

Clerk to the Board of Supervisors

August 1, 2003

**PETITION
PURSUANT TO VIRGINIA CODE SECTION 33.1-431
FOR THE CREATION OF THE DULLES RAIL
TRANSPORTATION IMPROVEMENT DISTRICT**

**TO THE BOARD OF SUPERVISORS
OF FAIRFAX COUNTY, VIRGINIA**



WHEREAS, Washington Dulles International Airport ("Dulles Airport") is one of the fastest growing airports in the world and provides a critical national and international transportation link to the Nation's Capital; and

WHEREAS, Tysons Corner, Reston and the Town of Herndon, located along the Dulles Airport Access Road/Toll Road ("Toll Road") corridor between the existing Metro Orange Line and Dulles Airport, are among the most vibrant and dynamic commercial areas in the United States, with tremendous potential for future economic development and job growth opportunities; and

WHEREAS, the citizens of Fairfax County (the "County") and all travelers to and from the Nation's Capital would derive extraordinary benefits from the timely extension of rail service from the existing Metro Orange Line through Tysons Corner, Reston and Herndon to Dulles Airport; and

WHEREAS, the timely extension of rail service would promote economic development and job growth in the Tysons Corner, Reston and Herndon business communities in accordance with Fairfax County's long range economic development strategy as provided in the County's comprehensive plan; and

WHEREAS, national security interests would be served by improving access between Washington, D.C. and Dulles Airport with an extension of rail service; and

WHEREAS, an extension of rail service to Dulles Airport would significantly relieve traffic congestion, resulting in better air quality and related environmental benefits as well as an improved quality of life for the citizens of Fairfax County; and

WHEREAS, tourism would be advanced by improving access between Washington, D.C. and Dulles Airport with an extension of rail service, particularly with the opening of the National Air and Space Museum near Dulles Airport; and

WHEREAS, funds available from public sources alone are inadequate to accomplish the timely extension of rail service to Dulles Airport, thus compromising the economic development, national security, environmental, tourism and quality of life benefits that would be realized by the extension of rail service; and

WHEREAS, the Fairfax County Board of Supervisors (the "Board") and the Virginia Commonwealth Transportation Board have approved a Locally-Preferred Alternative ("LPA") for the extension of rail service to Dulles Airport; and

WHEREAS, landowners of industrially and commercially zoned property and of taxable leasehold interests along the proposed rail extension corridor would benefit specially from the extension of rail service to Dulles Airport; and

WHEREAS, landowners along the proposed rail extension corridor have joined with the Board and the political leadership of the Commonwealth of Virginia to create a public-private partnership to accomplish the timely extension of rail service to Dulles Airport as approved with the LPA; and

WHEREAS, the landowners are prepared to proceed with the public-private partnership to fund construction in accordance with the LPA in express reliance upon certain material and

essential understandings between the landowners and the Board as described more particularly in **Exhibit D** attached to this Petition.

WHEREAS, the landowners believe that protection and enhancement of the real property values within the District, including increased densities and intensity of uses anticipated as a result of the transportation benefits of the extension of rail service, are critical to the success of this public-private partnership.

NOW, THEREFORE, the undersigned real property owners (the "Petitioners") do hereby petition the Board to establish by resolution a transportation improvement district (the "District") pursuant to Chapter 15 of Title 33.1 of the Code of Virginia, as amended (the "Act"). In support of this Petition, the Petitioners state the following:

1. **Standing and Jurisdiction.** The Petitioners are the owners of at least fifty-one (51) percent of the assessed value of the real estate and improvements thereon that is within the geographic boundaries of the proposed District and that has been zoned for commercial or industrial use or is used for such purposes. All parcels within the proposed District are located within the County and some are located within the Town of Herndon (the "Town"). The District as proposed complies with all requirements of the Act for establishment of a district.

2. **Name and Description of the Proposed District.** The Petitioners request that (i) the District be named the "Dulles Rail Transportation Improvement District;" (ii) the District be created with the boundaries as set forth on the map attached to this Petition as **Exhibit A**, which exhibit is incorporated herein by this reference; and (iii) the District include all of the properties within the boundaries set forth on the map for the District. A list of the properties included within the boundaries set forth on such map for the District is attached to this Petition as **Exhibit B**, and is incorporated herein by this reference.

3. **Description of Proposed District Transportation Improvements.** The Petitioners propose that each of the following transportation improvements within the District (the "Transportation Improvements") be acquired, constructed and equipped (including the cost to acquire rail cars needed to provide service to the District but not the cost to replace such rail cars as they wear out):

a. A public mass transit system extending to Dulles Airport from the existing Metro Orange Line between the East Falls Church and West Falls Church Metro Stations, as more particularly described in the copy of the LPA attached to this Petition as **Exhibit C** and incorporated herein by this reference.

b. Stations for passenger access to be constructed along the public mass transit system proposed by this Petition, at the approximate locations described in **Exhibit C**.

4. **Proposed Plan for Providing the Transportation Improvements.** The Petitioners propose the following plan and time table for completion of the proposed Transportation Improvements:

a. **Establish District.** The Board would immediately provide a copy of this Petition to the Town Council and request that the Town Council adopt a resolution in accordance with the Act approving the inclusion in the District of the real property located within the Town as described in this Petition. As soon as practicable after the Town Council adopts such a resolution, and following the procedure specified in the Act, the Board would adopt a resolution pursuant to the Act establishing the District and appointing the Board's representatives to the governing body of the District (the "District Commission"). At or about that time, the Town Council would appoint its representative to the District Commission. In addition, the Board would pass, immediately prior to adopting the resolution establishing the District, the resolution

attached to this Petition as **Exhibit D** (the "Material and Essential Understandings Resolution") setting forth the material and essential understandings of the County and the Petitioners with respect to the District upon which the Petitioners have expressly relied.

b. District Commission. The District Commission shall consist of (i) four members of the Board, appointed by the Board, (ii) one member of the Town Council appointed by the Town Council, and (iii) the Chairman of the Commonwealth Transportation Board or his designee. The District Commission thereafter would take such action as permitted by the Act to provide for the funding, acquisition, construction and equipping of the Transportation Improvements, including but not limited to entering into agreements requiring the payment of proceeds from a special tax levied and collected as authorized by the Act (the "Special Tax").

c. District Advisory Board. Within thirty (30) days after the establishment of the District, the Board shall appoint six (6) members to the district advisory board (the "District Advisory Board"), and the Town Council shall appoint two (2) members to the District Advisory Board. Three (3) of the six (6) members appointed by the Board, and one (1) of the two (2) members appointed by the Town Council shall be chosen from nominations submitted by the Petitioners. All members of the District Advisory Board shall own or represent the owners of real property within the District zoned or used for commercial or industrial purposes. Each member of the District Advisory Board shall be appointed for a term of four years, except the initial appointment of District Advisory Board members shall provide that the terms of three of the members shall be for two years. If a vacancy occurs with respect to a District Advisory Board member initially appointed by the Board or the Town Council, or any successor of such a member, the Board or the Town Council, as appropriate, shall appoint a new member who is an owner or representative of an owner of real property within the District zoned or used for

commercial or industrial purposes. If a vacancy occurs with respect to a District Advisory Board member initially nominated by the Petitioners, or any successor thereof, the remaining District Advisory Board members initially nominated by the Petitioners, or the successors of such remaining District Advisory Board members, shall nominate a new member for selection by the Board or Town Council, as appropriate. The District Advisory Board members shall serve without pay, but the Board shall provide the District Advisory Board with facilities for the holding of meetings, and the District Commission shall appropriate funds needed to defray the reasonable expenses and fees of the District Advisory Board, which shall not exceed \$20,000 annually, including, without limitation, expenses and fees arising out of the preparation of an annual report. Such appropriations shall be based on an annual budget submitted by the District Advisory Board, and approved by the District Commission, sufficient to carry out the District Advisory Board's responsibilities. The District Advisory Board shall present an annual report to the District Commission on the status of the Transportation Improvements and the activities of the District Advisory Board, and the District Advisory Board shall present special reports on transportation matters as requested by the District Commission or the Board concerning taxes to be levied within the District.

d. Pursue Funding, Design, Planning and Construction of the Transportation Improvements. The District would pursue full funding of the Transportation Improvements from available sources, including, without limitation, funding by the federal government and the Commonwealth of Virginia. The District would pursue with the federal government and the Commonwealth of Virginia design, planning and construction of the Transportation Improvements with the goal of extending rail service from the existing Metro Orange Line to Dulles Airport as expeditiously as possible. The District would enter into

necessary and appropriate agreements for the purpose of accomplishing the funding, design, planning and/or construction of the Transportation Improvements within the District; provided, however, that the District would not enter into any such agreements unless and until (i) appropriate commitments are in place from all sources contributing to the costs of the Transportation Improvements that are the subject of the agreement to ensure adequate funds are available to complete those Transportation Improvements toward which the District would be obligating its revenues, (ii) the aggregate costs, which include construction costs and necessary costs of financing, but exclude interest and required reserves (collectively, the "Aggregate Costs"), to the District of all of the Transportation Improvements constructed within the District would not exceed SIX HUNDRED TWENTY-FIVE MILLION DOLLARS (\$625,000,000.00), with not more than FOUR HUNDRED MILLION DOLLARS (\$400,000,000.00) of such amount to be expended on the Aggregate Costs of the Phase I Transportation Improvements (as defined below), (iii) the obligations of the District to pay satisfy the limitations on the Special Tax (as defined below) provided in Paragraph 4.g. below, and (iv) it is reasonably anticipated that the District's share of the total construction costs of all of the transportation improvements needed to extend a public mass transit system from the existing Orange Line to west of Dulles Airport, as generally described in Exhibit C, including such transportation improvements located outside the District as well as within the District, would remain consistent with the current understanding of the anticipated contributions from the various funding sources, i.e., approximately 15.9% of the total construction costs would be contributed by the Special Tax revenues of the District. If any one or more of these four conditions are not satisfied, the District could not enter into any such agreements unless and until it receives the written approval of the

owners of at least fifty-one (51) percent of either the land area or the assessed value of real property in the District zoned or used for commercial or industrial purposes.

e. Phase I Transportation Improvements. It is anticipated that funding and construction of the Transportation Improvements would occur in phases. The District would pursue in the next reauthorization of the federal Transportation Equity Act for the 21st Century (TEA-21) and federal "New Starts" appropriation bills, funding and construction of the Transportation Improvements from the existing Metro Orange Line to and including the planned Wiehle Avenue station (the "Phase I Transportation Improvements"). In the event a Full Funding Grant Agreement as described in 49 U.S.C. § 5309 (a "Full Funding Grant Agreement") or similar federal funding commitment for the Phase I Transportation Improvements is not executed by December 31, 2006, the Petitioners would be expected to petition the Board to abolish the District and refund all unexpended and unencumbered Special Tax revenues, pro rata with any interest, if any, to the then current owners of the properties in the District for which the Special Tax had been paid in the preceding tax year. If such a petition is received by the Board, the District Commission should not thereafter obligate the District to contribute funding for the construction of any Transportation Improvements.

f. Subsequent Phases of Construction. The District would continue to pursue funding for and construction of the remainder of the Transportation Improvements within the District west of the Wiehle Avenue Station (the "Remainder of the Transportation Improvements"). In the event that a Full Funding Grant Agreement or similar federal funding commitment for the Remainder of the Transportation Improvements is not executed in the subsequent reauthorization period following the reauthorization that authorizes funding for the Phase I Transportation Improvements, the District Commission shall not thereafter obligate the

District to contribute funding for construction of the Remainder of the Transportation Improvements without the written approval of the owners of at least fifty-one (51) percent of either the land area in or the assessed value of real property in the District zoned or used for commercial or industrial purposes.

g. Special Tax. Upon the written request of the District Commission, the Board would levy and collect the annual Special Tax on taxable real estate zoned for commercial or industrial use or used for such purposes and upon taxable leasehold interests within the District, at a rate permitted by the Act, but subject to the following limitations:

(i) Limited Purposes. The proceeds of any Special Tax collections shall only be used to pay for the District's contribution toward the capital costs of the Transportation Improvements as described in this Petition, and shall be used for no purposes, including, without limitation for the costs of operating and maintaining the Transportation Improvements, other than those identified in this Petition.

(ii) Lowest Rate Necessary. Once the District Commission has entered into any agreement for the purposes of making Special Tax revenues available to be used to pay for any Transportation Improvements, the Special Tax would be set annually at the lowest rate required (1) to fund the commitments, including maintenance of required reserves, (2) to accumulate funds reasonably anticipated to be necessary to pay for the Remainder of the Transportation Improvements, and (3) to fund the activities of the District Advisory Board as requested elsewhere in this Petition.

(iii) Initial Rate/Rate Stabilization Fund. Prior to the time the District Commission has entered into any agreement for the purpose of making Special Tax revenues available to be used to pay for any Transportation Improvements, the Special Tax rate shall not exceed twenty-two (22) cents per one hundred dollars (\$100) of the assessed fair market value of all real estate and improvements thereon, or the assessed value of taxable leasehold interests (collectively, the "Tax Base"), and such Special Tax revenues shall be used solely (1) to fund a rate stabilization fund for the purpose of funding Transportation Improvements within the Tax District in a financially advantageous manner and (2) to fund the activities of the District Advisory Board as requested elsewhere in this Petition.

(iv) Special Tax Rate - Phase I. The District Commission would not enter into any agreement for the purpose of making Special Tax revenues available to be used to pay for the Phase I Transportation Improvements, unless and until the District Commission concludes in good faith, assuming no more than a 1.5% average annual growth rate in assessed values, that the Special Tax revenues already collected and placed in the rate stabilization fund plus Special Tax revenues reasonably anticipated to be collected in the future at rates (1) not to

exceed twenty-two (22) cents per one hundred dollars (\$100) of the Tax Base for the Phase I Transportation Improvements, and (2) not to exceed a maximum rate of twenty-nine (29) cents per one hundred dollars (\$100) of the Tax Base for subsequent phases of the Transportation Improvements, will be sufficient to (a) pay the amounts reasonably anticipated to be due pursuant to the commitments being made in such agreement for the Phase I Transportation Improvements, (b) pay the amounts reasonably anticipated to complete the Transportation Improvements within the District, and (c) maintain reserves for the commitments being made and anticipated to be made in such agreements at levels deemed reasonable and prudent by the District Commission.

(v) Special Tax Rate - Subsequent Phases. The District Commission would not enter into any agreement for the purpose of making Special Tax revenues available to be used to pay for any subsequent phase of the Transportation Improvements (a "Subsequent Agreement"), unless and until the District Commission concludes in good faith, assuming no more than a 1.5% average annual growth rate in assessed values, that the Special Tax revenues already collected and available to be used to pay for that subsequent phase plus Special Tax revenues reasonably anticipated to be collected in the future at a maximum rate not to exceed twenty-nine (29) cents per one hundred dollars (\$100) of the Tax Base will be sufficient to (a) pay all commitments resulting from agreements previously entered into by the District Commission, including maintenance of necessary reserves, (b) pay the amounts reasonably anticipated to be due pursuant to the commitments being made in that Subsequent Agreement, and (c) maintain reserves for commitments being made in that Subsequent Agreement at levels deemed reasonable and prudent by the District Commission. If credit enhancements are necessary with respect to all or a portion of the financing of a subsequent phase of the Transportation Improvements in order to achieve a projected maximum Special Tax rate not to exceed twenty-nine (29) cents per one hundred dollars (\$100) of the Tax Base, an agreement to provide such credit enhancements shall be secured prior to the District Commission entering into any Subsequent Agreement regarding such Transportation Improvements.

(vi) Credit Enhancements. The District Commission should seek credit enhancements from any available source with respect to all or portions of the amounts financed by the District Commission if and to the extent such credit enhancements support an ongoing effort to finance the Transportation Improvements with the lowest Special Tax rate possible. However, if at the time the District Commission wishes to enter into a Subsequent Agreement, such credit enhancements are not available or are insufficient to achieve a projected twenty-nine (29) cent maximum Special Tax rates as described above in subparagraph (v), then the District Commission would not enter into that Subsequent Agreement unless requested to do so in writing by the owners of at least 51% of either the assessed value or the area of the real estate that is within the geographic boundaries of the District zoned or used for commercial purposes.

5. Material and Essential Understandings. The Petitioners have filed this Petition in reliance upon certain material and essential understandings, which the Petitioners request the

Board to acknowledge by adopting prior to establishment of the District the Material and Essential Understandings Resolution attached as **Exhibit D**.

6. **Zoning and Land Use Regulations.** The commercial and industrial zoning classifications and the uses, densities/intensities of use and all development, site plan and subdivision criteria, rules and regulations related thereto in effect as of the date the District is established shall remain in force within the proposed District without elimination, reduction or restriction except (i) upon the written request or approval of the owner of the property affected by the change, (ii) as required to comply with the provisions of the Chesapeake Bay Preservation Act (§ 10.1-2100 et seq.) or the regulations adopted pursuant thereto, (iii) as required to comply with the provisions of the federal Clean Water Act (33 U.S.C. § 1342(P)) and regulations promulgated thereunder by the federal Environmental Protection Agency, or (iv) as specifically required to comply with any other state or federal law.

7. **Duration/Abolition of the District.** Once all debt incurred to finance the District's contribution to the Transportation Improvements is paid in full and all other obligations incurred by the District through that date have been paid in full, the District shall be abolished in accordance with applicable law. Any surplus funds held by the District upon its termination should be refunded pro rata to the owners of real property in the District who paid the Special Tax during the preceding tax year. Nothing in this paragraph shall restrict any rights to abolish the District as provided in the Act and in accordance with applicable law.

8. **Benefits of Improvements.** The Petitioners represent that the District to be created would provide the following benefits to the residents of, businesses in, visitors to, and government of Fairfax County, to citizens throughout the Commonwealth of Virginia and/or to travelers to the Nation's Capital and/or business, residents and government offices and officials

within the Nation's Capital and its environs and owners of industrially and commercially zoned property and taxable leaseholds within the District:

- a. Owners of industrially and commercially zoned property and of taxable leasehold interests would benefit specially from the Transportation Improvements.
- b. The Transportation Improvements would substantially improve the ability of persons to move about in, along, and adjacent to the Transportation Improvements.
- c. The Transportation Improvements would substantially improve traffic flow in the area by diverting persons from the use of private vehicles to the use of public mass transit.
- d. The Transportation Improvements would create better access to nearby properties for residents of and visitors to the County.
- e. The Transportation Improvements would lead to increased values of nearby properties, leading to increased assessments and providing tax benefits to the County.
- f. The Transportation Improvements would create new jobs and opportunities for County residents.
- g. The Transportation Improvements would create better access to Dulles Airport for residents of and travelers to the County and the larger Washington D.C. metropolitan area.
- h. By improving access to Dulles Airport and throughout the proposed rail corridor, the Transportation Improvements will provide a wide range of economic development, national security, environmental, tourism and quality of life benefits.


For all of the above reasons, and in reliance upon the assurances set out in the Material and Essential Understandings Resolution attached as **Exhibit D**, the Petitioners respectfully

August 1, 2003

request the Board to create the Dulles Rail Transportation Improvement District in accordance with the Act.

IN WITNESS WHEREOF, on the following signature pages each of the Petitioners has caused this Petition to be executed on their behalf pursuant to due authority and has identified the property or properties they own within the boundaries of the proposed District by tax map identification number, street address, size, zoning, and use.

Counsel for the Petitioners:



Francis A. McDermott, Esquire
John C. McGranahan, Jr., Esquire
Hunton & Williams LLP
1751 Pinnacle Drive, Suite 1700
McLean, Virginia 22102
Telephone: (703) 714-7400
Facsimile: (703) 714-7410

[LANDOWNER SIGNATURES ON ATTACHED PAGES]

LIST OF EXHIBITS

Exhibit A - Map of Dulles Rail Transportation Improvement District

* Exhibit B - List of Properties Included Within Dulles Rail Transportation Improvement District

* Exhibit C - Copy of Approved Locally Preferred Alternative

Exhibit D - Material and Essential Understandings Resolution

* These items are available for review in the Town Clerk's Office

Exhibit A

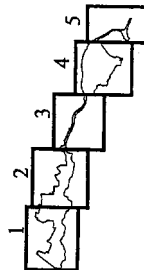
**Proposed Boundaries
of the Dulles Rail
Transportation
Improvement District**

Map Layers:

- Proposed Metro Transit Stations
- Proposed Metro Transit Lines
- Proposed Tax District Boundary

Map Sheet 1

Map Sheet Layout



August, 2003

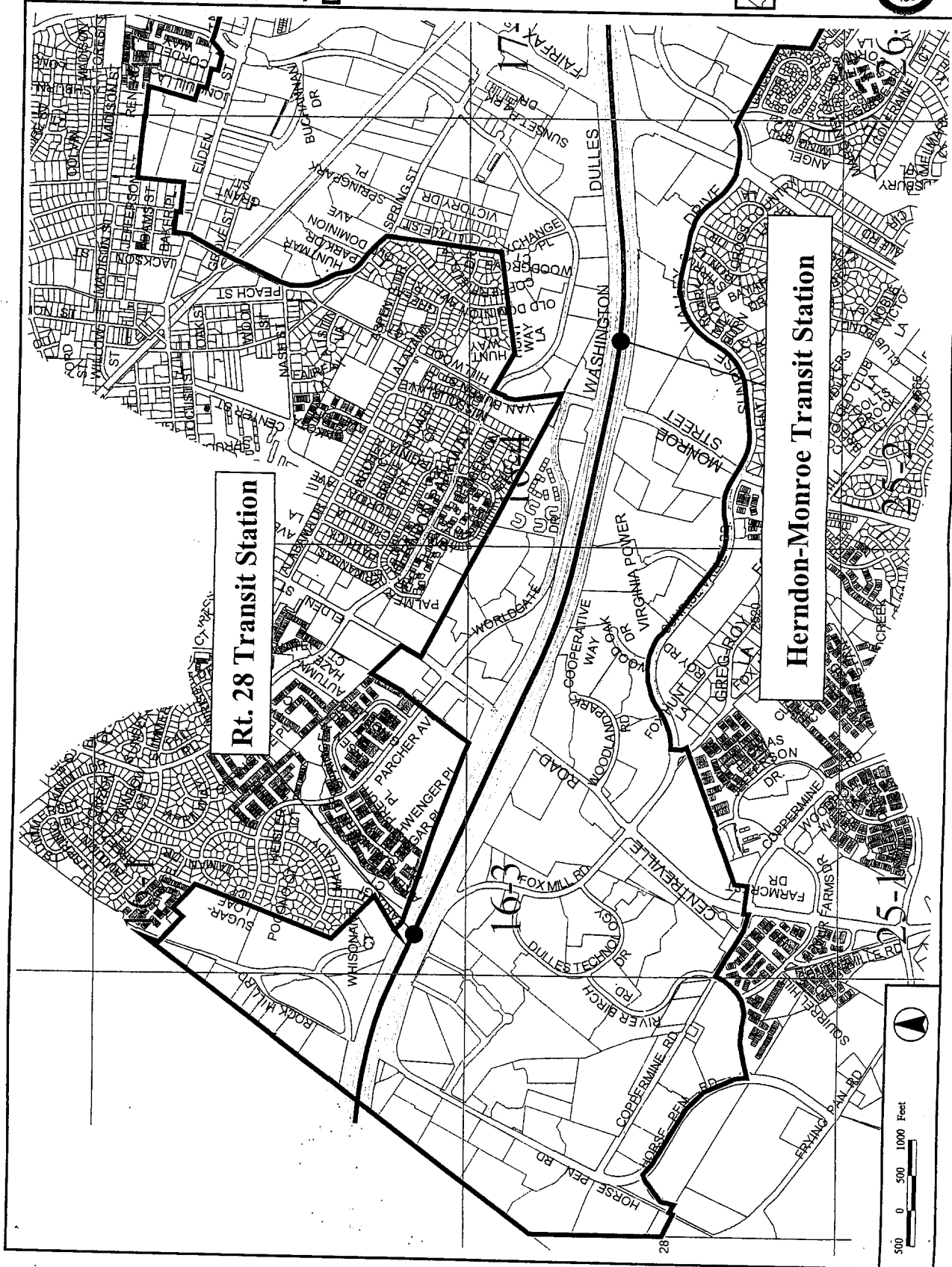


EXHIBIT C

PETITION PURSUANT TO VIRGINIA CODE SECTION 33.1-431 FOR THE CREATION OF THE DULLES RAIL TRANSPORTATION IMPROVEMENT DISTRICT

The costs of the Locally Preferred Alternative ("LPA") as described in Attachment A to the attached Resolution of the Board of Directors of the Washington Metropolitan Area Transit Authority regarding selection of the LPA include, among other things: (1) guideway elements, including guideway foundation, substructure, and superstructure, trackwork, yard storage tracks, and yard lead tracks providing access to yards; (2) yards and shops, including maintenance facilities; (3) system elements, including train control, traction power, and communications, technological, and fare collection equipment; (4) passenger stations, including access facilities, signage, and graphics; (5) rail cars; (6) special conditions, including utility modifications and storm water management facilities, demolition, roadway modification and traffic maintenance, environmental mitigation, and landscaping; (7) acquisition of permanent and temporary right-of-way and easements; (8) soft costs such as preliminary engineering, engineering design, construction management, project management, change orders, project insurance, training, start-up costs, and testing; and (9) financing costs.

EXHIBIT D

MATERIAL AND ESSENTIAL UNDERSTANDINGS RESOLUTION

WHEREAS, the Board of Supervisors of Fairfax County, Virginia, (the "Board") acting upon a petition of landowners ("Petition") proposes to pass a resolution to establish the Dulles Rail Transportation Improvement District (the "District"); and

WHEREAS, the Board and the petitioning landowners have reached certain material and essential understandings concerning the purpose and intent of the District, the financial obligations that should be incurred by the District, and the operation and actions of the District; and

WHEREAS, the landowners filed the Petition in reliance upon those material and essential understandings, which the landowners believe should be honored by the District Commission and by the Board, and their respective successors; and

WHEREAS, the Petitioners have made it clear to the Board that they would not have filed such Petition without those material and essential understandings upon which the Petition is based; and

WHEREAS, as part of their plan for implementation of the Transportation Improvements contained in the Petition, the Petitioners have requested that the Board by resolution acknowledge these material and essential understandings immediately prior to the establishment of the proposed District; and

WHEREAS, certain capitalized terms used herein are defined in the Petition and each such term has the meaning when used herein that is ascribed to it in the Petition; and

WHEREAS, subject to the express understanding by the Petitioners that future Boards legally cannot be bound by this resolution, the Board, in recognition of the crucial significance to

the Petitioners of these material and essential understandings, is willing in good faith to make the following representations in response to the request by the Petitioners:

1. That the Board and the landowners intend to pursue the establishment and implementation of the District with the overall objective of accomplishing the extension of rail service from the existing Metro Orange Line to Dulles Airport as described in the LPA, as proposed by the Petition, as efficiently, expeditiously and cost effectively as possible.

2. That funds from the Special Tax levied and collected in the District should not be used to finance more than SIX HUNDRED TWENTY-FIVE MILLION DOLLARS (\$625,000,000.00) of the Aggregate Costs of the Transportation Improvements within the District, with not more than FOUR HUNDRED MILLION DOLLARS (\$400,000,000.00) to be expended on the Aggregate Costs of the Phase I Transportation Improvements, without the written approval of the owners of at least fifty-one (51) percent of either the land area or the assessed value of real property in the District zoned or used for commercial or industrial purposes.

3. That the Board believes that adequate funds should be provided by parties other than the District and the County, including but not limited to the federal government and the Commonwealth of Virginia, to provide the portion of the Aggregate Costs of the Phase I Transportation Improvements that exceed FOUR HUNDRED MILLION DOLLARS (\$400,000,000.00) and the portion of the Aggregate Costs of all of the Transportation Improvements constructed within the District that exceed SIX HUNDRED TWENTY-FIVE MILLION DOLLARS (\$625,000,000.00).

4. That the Board should not impose a Special Tax inconsistent with Paragraph 4.g. of the Petition without the written approval of the owners of at least fifty-one (51) percent of

either the land area or the assessed value of real property in the District zoned or used for commercial or industrial purposes.

5. That in the event a Full Funding Grant Agreement or similar federal funding commitment for the Phase I Transportation Improvements is not executed by December 31, 2006, and the District Commission has not committed any Special Tax revenue for construction of any Transportation Improvements, then the landowners would be expected to petition a future Board to abolish the District, and, the Board requests that the future Board, upon receipt of such a petition, promptly should take all steps as may be permitted or required by the Act to abolish the District and, upon abolition in this circumstance, the future Board should disburse all unexpended and unencumbered Special Tax revenues, pro rata along with any interest earned on those revenues by the County as determined by the County, to then current owners of the properties in the District for which the Special Tax had been paid in the preceding tax year as shown in the records of the County's Department of Tax Administration, upon the written request for such a pro rata disbursement received by the County from any such owner within 90 days following abolition of the District.

6. That in the event a Full Funding Grant Agreement or similar federal funding commitment for the Remainder of the Transportation Improvements is not executed in the subsequent reauthorization period following the reauthorization that authorizes funding for the Phase I Transportation Improvements, the Board requests future District Commissions and Boards not to thereafter obligate the District to contribute funding for construction of the Remainder of the Transportation Improvements without the written approval of the owners of at least fifty-one (51) percent of either the land area or the assessed value of real property in the District zoned or used for commercial or industrial purposes.

7. That the Petitioners and the Board request that the Commonwealth set the tolls for the Toll Road at the lowest rate required to fund the Commonwealth's commitments related to funding the Transportation Improvements, including maintenance of required reserves.

8. That a feeder shuttle service with sufficient capacity and functioning with limited stops to provide access from properties within the District to the stations identified in **Exhibit C** should be available and operating to serve the station it is intended to serve when such station opens, and that the access that is provided by such feeder shuttle service should be direct, convenient and expedient.

9. That secondary roads and parking facilities in the District in the vicinity of the Wiehle Avenue Station should be improved in a coordinated and timely manner with the Phase I Transportation Improvements to establish a sound transportation network for the Wiehle Avenue Station area until the Transportation Improvements west of the Wiehle Avenue Station area are provided.

10. That of the members appointed by the Board to the District Commission, at least two should represent magisterial districts in which the Transportation Improvements are located.

11. That with respect to the District Advisory Board the following should apply:

(a) In appointing the members of the District Advisory Board, the County and the Town should seek to achieve representation throughout the geographic area within the District and across the various property-types subject to the Special Tax (i.e., commercial, industrial, taxable leasehold interests).

(b) In replacing members of the District Advisory Board, the County and the Town should seek to replace the departing member with a person that represents similar interests to achieve the diversity of representation throughout the geographic boundaries of the District and across the various property-types subject to the Special Tax.

(c) The Chairman of the District Advisory Board should receive notice of all District Commission meetings in the same manner and at the same time as members of the District Commission. The District Commission should seek the advice and recommendation of

the District Advisory Board prior to taking any material action relating to the District, provided that the District Advisory Board gives its advice and recommendation to the District Commission within thirty (30) days of a request by the District Commission.

12. That the Board acknowledges that (i) the protection of real property values within the District is critical to the success of the District and that the provisions of Va. Code Ann. § 33.1-431(C) in effect as of this date provide desirable protection against certain changes in zoning or land use regulations that might adversely affect real property values within the District, (ii) increased densities and intensity of uses should be located in the vicinity of the rail stations in accordance with the County's comprehensive plan, and (iii) the timing criteria for consideration of increases in density and intensity of use of a particular property based on the "Option with Rail" or "rail-oriented mixed-use options" development scenarios in the County's comprehensive plan will have been satisfied once a Full Funding Grant Agreement or comparable funding agreement adequate to design and build the rail station nearest to the property and the rail line to that station from the Metro Orange Line has been executed by all necessary funding stakeholders.

13. That future Boards and District Commissions should take all reasonable steps consistent with sound financial management of the County and the District, including, but not limited to consideration of credit enhancement mechanisms, to minimize the Special Tax necessary to fund the District's share of the cost of the Transportation Improvements, subject to the limitations set forth in the text of the Petition.

NOW, THEREFORE, BE IT RESOLVED that the Board agrees that the material and essential understandings regarding the District set out above should be honored, and requests future District Commissions and Boards to take action consistent therewith; and

BE IT FURTHER RESOLVED that the Board hereby requests future Boards during the life of the District to take appropriate actions in good faith to attempt to secure adequate revenues from the federal government, the Commonwealth of Virginia and other available sources on a timely basis to assist in offsetting the costs of the Transportation Improvements throughout the term of the District; and

BE IT FURTHER RESOLVED that after the District Commission has entered into agreements for the purpose of making Special Tax revenues available to be used to pay for any Transportation Improvements, the Board requests future Boards to set the rate of the Special Tax at the lowest rate required to fund the commitments made in such agreements, including maintenance of required reserves, pay for the other Transportation Improvements, and fund the activities of the District Advisory Board as permitted by applicable law; and

BE IT FURTHER RESOLVED that the Board requests future Boards to take all steps as may be permitted or required by the Act to abolish the District promptly upon receipt of a petition for abolition in the event that a Full Funding Grant Agreement or similar federal funding commitment is not executed by December 31, 2006, for the Phase I Transportation Improvements and the District Commission has not committed any Special Tax revenue for the construction of any Transportation Improvements, and in that event all unexpended and unencumbered Special Tax revenues should be disbursed, pro rata with interest, if any, earned by the County on those revenues, as determined by the County, to the then-current owners of the properties in the District for which the Special Tax had been paid in the preceding tax year, as shown in the records of the County's Department of Tax Administration, upon a written request for such pro rata disbursement from any such owner made within 90 days following abolition of the District; and

BE IT FURTHER RESOLVED that, in the event that a Full Funding Grant Agreement or similar federal funding commitment for the Remainder of the Transportation Improvements is not executed in the subsequent reauthorization period following the reauthorization that authorized funding for the Phase I Transportation Improvements, the Board requests future District Commissions and Boards not to thereafter obligate the District to contribute to the funding and construction of the Remainder of the Transportation Improvements without the written approval of the owners of at least fifty-one (51) percent of either the land area or the assessed value of real property in the District zoned or used for commercial or industrial purposes.

Chair, Fairfax County Board of Supervisors

Clerk, Fairfax County Board of Supervisors